

## **TITLE 326 AIR POLLUTION CONTROL BOARD**

### **#05-117 (APCB)**

#### **SUMMARY/RESPONSE TO COMMENTS FROM THE THIRD COMMENT PERIOD**

The Indiana Department of Environmental Management (IDEM) requested public comment from August 9, 2006, through August 30, 2006, on IDEM's draft rule language. IDEM received comments from the following parties:

Indiana Energy Association (IEA)  
United States Combined Heat & Power Association (U.S. CHPA)  
NiSource (NIS)  
Mittal Steel (submitted by Squire Sanders) (MS)

Following is a summary of the comments received and IDEM's responses thereto.

*Comment:* The commenter provided draft rule language to be included in the energy efficiency and renewable energy (EE/RE) grant provisions of each CAIR NOx trading rule at 326 IAC 24-1-8(h)(4)(E) and 326 IAC 24-3-8(i)(4)(E). The suggested language includes provisions for the Office of Energy and Defense Development (OED) to hold NOx allowances in a general account until such time that projects are approved for grant funding and then selling NOx allowances to provide cash dollars for the grant funding, reporting requirements for IDEM regarding allowance transaction activity and use of grant funds, and a provision for returning to CAIR NOx units a portion of unused allowances held by OED once a certain threshold is met. NOx allowances in the annual trading program would be returned to CAIR NOx units and in the ozone season trading rule NOx allowances would be returned to large affected units. (IEA)

*Comment:* The commenter recommends that language be added to the energy efficiency and renewable energy grant program provisions to govern the distribution of unreserved NOx allowances in 326 IAC 24-1-8(h)(4)(E) and 326 IAC 24-3-8(i)(4)(E). Key concepts should be consistent in each of these two rules. However, rule-specific provisions should be incorporated into the different rules concerning the return of allowances held by OED based on the origin of the allowances (CAIR NOx units versus large affected units). Key concepts that should be included in the EE/RE provisions of both rules include: 1) unreserved NOx allowances held by OED should be held by OED in a general account and sold when needed to fund an approved project; 2) the revenue from the sale of the allowances is to be used exclusively to fund the matching grant program for the EE/RE projects and not allowed to revert to the state general fund; 3) an annual report should be provided by the OED to the IDEM commissioner and the air pollution control board regarding allowance transaction activity and the distribution and the balance of the matching grant funds for the EE/RE projects during that period; and 4) a provision that returns to the existing units (CAIR NOx units versus large affected units depending on the

origin of the allowances) fifty percent (50%) of the allowances when the total number of these unreserved allowances is greater than 500. (NIS)

*Response:* IDEM has added the EE/RE grant program language as suggested by IUG to the rule proposed for final adoption. The 500 ton cap for returning unused allowances applies separately to the CAIR NOx annual and ozone season trading programs.

*Comments:* The commenter previously submitted compliance supplement pool (CSP) language to IDEM for 326 IAC 24-1-8(g)(1)(B)(v) that was not included in the proposed rule. The commenter requests that IDEM provide reasoning as to whether this was intentional and a decision was made by IDEM or U.S. EPA that it was not needed or if it was an oversight. (IEA)

*Response:* This was an oversight and the sentence has been added to the rule proposed for final adoption.

*Comment:* The references at 326 IAC 24-1-8(g)(2) are incorrect. The references cited should be to subdivision (1)(B)(i) through (1)(B)(iii). (IEA)

*Response:* IDEM agrees and has corrected the reference as stated.

*Comment:* The commenter understands the language in subsection 326 IAC 24-1-8(g) to mean that early reduction requirements do not expire even though the language does not explicitly mention it. (IEA)

*Response:* IDEM agrees.

*Comment:* Language within the CSP provisions stating in no case shall the actual amount of additional CAIR NOx allowances awarded exceed the number of actual NOx reductions achieved was not included in the proposed rule. (IEA)

*Response:* IDEM has consulted with U.S. EPA and U.S. EPA agrees that this language is needed for the CSP provisions to be approved by U.S. EPA. IDEM has added this language to the final rule at 326 IAC 24-1-8(g)(5)(C).

*Comment:* 326 IAC 24-1-8(h)(2)(C) appears to contain an incorrect citation. The references cited should be to subdivision (2)(38)(G) not (2)(40)(G). (IEA)

*Response:* IDEM agrees and has made the correction in the rule proposed for final adoption.

*Comment:* IDEM should clarify the definition of what qualifies as a renewable fuel as it pertains to renewable energy projects for the purpose of this rulemaking. (IEA)

*Response:* IDEM has added language to the renewable energy projects in clause (H) of 326 IAC 10-4-2(18)(H), 326 IAC 24-1-2(38)(H), and 326 IAC 24-3-2(38)(H) to clarify which projects are included. The renewable energy projects included in this list are solar energy or methane from landfills, water treatment plants, sewage treatment plants, or anaerobic digestion systems on animal or plant wastes. At this time IDEM is proposing to be more restrictive in

what types of projects are allowed based on renewable projects currently operating or proposed in Indiana. If necessary IDEM can set up a small workgroup to discuss expansion of the renewable energy projects list and revise the rule in the future.

*Comment:* IDEM should clarify the definition of renewable energy projects as defined in 326 IAC 10-4-2(18)(H), 326 IAC 24-1-2(38)(H), and 326 IAC 24-3-2(38)(H) by changing the language from “...displace the use of coal, natural gas, or oil through the use...” to read as “...displace some portion of the combustion of coal, natural gas, or oil through the use...” This will clarify that renewable energy projects must displace the use of these fuels used in the combustion process for the production of electricity for sale versus any general use of these materials not directly involved in the production of energy. (IEA)

*Response:* IDEM has changed the language as requested.

*Comment:* The commenter supports IDEM’s consideration of incentives for cogeneration and distributed generation sources within the CAIR rulemaking. IDEM’s proposed adoption of output-based standards for new emissions units will more equitably award NOx allocations to sources that efficiently generate power. Incentives for combined heat and power (CHP) can also be provided through allowance set-asides. Small CHP projects should also be eligible for allowance set-asides to facilitate their entry into the marketplace. (U.S. CHPA)

*Response:* IDEM appreciates the support.

*Comment:* The commenter appreciates the inclusion of provisions for unattended sources that would allow for the retention of records at a central location within Indiana as was provided in the Indiana NOx SIP Call rule. Inclusion of these provisions in the Indiana CAIR will help address the practical concerns of affected parties faced with this situation and provide certainty compared to the petition process contained in the U.S. EPA CAIR. (NIS)

*Response:* U.S. EPA is allowing IDEM to retain the central records location provisions in the Indiana CAIR as was previously provided in the NOx SIP Call rule.

*Comment:* IDEM should update the affected parties regarding any proposed changes to the rule language resulting from discussions with U.S. EPA regarding outstanding issues. This update should be given as much in advance of the second hearing as possible. (NIS)

*Response:* U.S. EPA provided written comments to IDEM and IDEM has shared them with interested parties.

*Comment:* The language in 326 IAC 24-1-5(d), 326 IAC 24-2-5(d), and 326 IAC 24-3-5(d) appears to be more a statement of fact than a regulatory requirement. IDEM should revise the language to more clearly convey that the appeal procedures for decisions of the U.S. EPA under the CAIR trading program will follow those procedures specified in 40 CFR 78. (NIS)

*Response:* IDEM has changed the language as requested.

*Comment:* The reference to the first item in 326 IAC 24-1-11(h)(3)(ED) should be (i) instead of (I). (NIS)

*Response:* IDEM agrees and has made the correction.

*Comment:* For clarity, the commenter recommends that “NOx” be inserted between “its” and “emissions” to clarify and appropriately limit the applicability to a source that vents all its NOx emissions to a stack. This would be consistent with the intent of this section. (NIS)

*Response:* IDEM has made the change as requested.

*Comment:* The commenter operates one facility that is subject to the CAIR NOx ozone season trading program as a non-electric generating unit (non-EGU); Ispat Inland. There are other facilities in Indiana that are currently subject to 326 IAC 10-3 and therefore not subject to the current NOx SIP Call trading program under 326 IAC 10-4. IDEM should identify a process in this rulemaking for moving sources currently subject to 326 IAC 10-3 into the CAIR NOx ozone season or annual trading programs. As a placeholder, the CAIR rule should state, “Affected boilers under 326 IAC 10-3 may join the CAIR NOx ozone season or annual trading programs by submitting a permit application within 12 months following the effective date of this rule. Allowances shall be determined using the NOx rate required for affected boilers in the SIP rule (0.17 lb/MMBtu) and baseline heat input determined using the best available data certified by a responsible official.”

The opt-in provisions of CAIR are inadequate for moving existing sources from 326 IAC 10-3 into the CAIR trading program. Opt-in sources are allocated just 70% of the actual NOx emissions monitored during the control period before joining the CAIR trading program. Therefore, the only units that will join the CAIR trading program under the opt-in provisions are those with plans to reduce NOx emissions by more than 30% after opting-in. The commenter reduces NOx emissions by maximizing the use of blast furnace gas and improving combustion efficiencies, which keeps NOx emissions well below the targeted NOx emission rate. The proposed opt-in provisions penalize systems like this that already achieve low NOx emissions. The opt-in rules should eliminate the 70% reduction in the baseline NOx emission rate calculation and use instead the most stringent NOx rate allowed by permit or rule. The CAIR rule should also specify that the NOx allowances distributed to units transitioning from 326 IAC 10-3 in the CAIR trading program will be new allowances, not set-aside allowances. (MS)

*Response:* IDEM is unable to move sources from 326 IAC 10-3 to the CAIR trading program because 40 CFR 51.123(aa)(2)(i) limits the state’s ability to expand the applicability provisions in CAIR to only those non-EGUs currently subject to the state’s emission trading program approved under 40 CFR 51.121(p) (i.e., 326 IAC 10-4 NOx SIP Call rule). Furthermore, U.S. EPA will not approve modifications to the opt-in provisions in CAIR.

*Comment:* IDEM should revisit the decision to limit the baseline period for non-EUG heat input data to six (6) years (2000-2005). IDEM suggests that limiting the duration of the baseline period to six (6) years improves reliability. The data that the commenter has in support

of its heat input for 1998 and 1999 is the same as, and just as reliable as, the heat input data for the six (6) year baseline proposed by IDEM. IDEM also suggests that more recent data is preferred, but has included a eight (8) year baseline period for EGUs in the proposed rule. The commenter has units that were idled in 2000 when alternate, low NO<sub>x</sub> fuel options became available. The six (6) year baseline line does not cover years when these units were in operation and reduces the number of allowances available to the commenter. This environmentally-beneficial decision was supported by the belief that a continuing stream of NO<sub>x</sub> allowances would be available to generate income to help pay back the project costs. The baseline for the first CAIR allowance calculation for non-EGUs should be 1998-2005. (MS)

*Response:* Although some sources may have reliable heat input data for 1998 and 1999, not all sources do and for this reason IDEM has included a baseline period of 2000-2005 for non-EUG heat input data. IDEM provided a longer initial baseline period for EGUs because EGUs have eight (8) years of Part 75 heat input data and many EGUs were installing control equipment in the 2000-2005 timeframe. Using a shorter timeframe for the EGUs would negatively impact sources that were shutdown to install controls to comply with the NO<sub>x</sub> SIP Call and this is not the case with the non-EGUs. Therefore IDEM is proposing to keep the heat input years for non-EGUs as preliminarily adopted.